IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7206 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVIN FLOURINE INDUSTRIES - Petitioner(s)
Versus
GUJARAT RAJYA KAMDAR UNION - Respondent(s)

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Appearance :
NMR PARITOSH CALLA for NANAVATI ASSOCIATES for Petitioner(s) : 1,
MS HEENA DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

1. Shri Paritosh Calla, learned counsel for the petitioner; Ms. Heena Desai, learned counsel for the respondent.

2. The petitioner, being aggrieved by the award dated 4.5.96, passed by the Industrial Tribunal, Surat in Reference [IT] No. 28/92, is before this Court under Article 227 of the Constitution of India, with a submission that the Industrial Tribunal erred in holding that, the employee was entitled to be confirmed on the post held by him; he was also entitled to the benefits flowing from the post held by him as permanent employee and further erred in directing payment of 15% interest and also erred in directing that the interest, which the workman could earn on the deposits should be paid by the industry.

3. The short facts necessary for disposal of the present matter are that after four vacancies occurred on the post of Technical Gr.III, concerned workman Shri Shantilal R. Patel and other three persons were appointed, three others were confirmed almost after about one year, while the concerned workman was not confirmed. On an earlier occasion, the Union issued a Charter of demands and came to the Industrial Tribunal. Unfortunately, the name of

the concerned workman Shantilal R. Patel was not included in the said Reference, the Reference was compromised and ultimately, certain orders were made in favour of those workmen who were party to the earlier Reference. As the workman concerned in the present writ petition was not a party to the earlier Reference, the industry refused to extend the benefits in favour of the workman to which he was other wise also entitled being standing on the very same pedestal. The Union again made a Reference and prayed for all the reliefs. In addition to a question of discrimination, the question of victimization was also raised, submitting inter alia, that the workman's brother was office bearer of the Union and as he had staged Dharna/Protest against the Industry, the present workman was being victimized.

4. The Industry, the present petitioner, appeared in the Court and submitted that the workman was appointed as temporary employee; he was not victimized nor discriminated and as he was temporary employee, he was not entitled to the

benefits flowing from a permanent post.

5. After casting as many as 14 issues, the learned Industrial Tribunal,held that the workman was appointed as probationer; defence of the Industry that the petitioner was appointed as temporary employee was wrong; in view of the definition clause, there was no good reason for the Industry not to confirm the workman; the workman was discriminated and in fact, was victimized, because, he happened to be the brother of office bearer of the Union.

6. After taking me through the findings recorded by the learned Industrial Tribunal, learned counsel for the petitioner, however, submitted that the findings recorded by the learned Industrial Tribunal are patently illegal. He submitted that the findings relating to discrimination and victimization are patently illegal. He also submitted that as the employee was appointed as temporary employee, he was not entitled to the benefits which are available to a permanent employee or a probationer on his confirmation. He submitted that the award of interest at the

rate of 15% per annum suffers from the vice of excessiveness.

7. Ms. Heena Desai, learned counsel for the respondent, on the other hand, submitted that the learned Industrial Tribunal, after properly appreciating the evidence, if has recorded a finding of fact, then, this Court, in its jurisdiction under Article 227 of the Constitution should not interfere.

8. From the judgment of the Industrial Tribunal, it would clearly appear that it has given cogent reasons for holding that the workman was not temporary employee. Referring to the definition of “temporary workman”, the Tribunal has found that the present workman was not mainly appointed for temporary work for limited period nor was employed for some time in a permanent work in the circumstances of the temporary increase in the work as an additional workman. The Tribunal found that there were four vacancies available in the permanent cadre and as many as four persons were so appointed. The Tribunal has held that on completion of one

year or so, if other three were confirmed as stated above, then, it was justified in holding that the workman was also appointed as probationer. In the opinion of this Court the finding recorded by the Industrial Tribunal cannot be termed to be perverse, bad or contrary to the records.

9. So far as the question of discrimination is concerned, the Industrial Tribunal has given cogent reasons to hold that the present workman was discriminated. Once it is held that the workman was a probationer and not temporary workman, then, he was entitled to be confirmed on completion of one year's successful probation. The petitioner-Industry has nowhere stated that the present workman did not complete the work or completed the work with satisfaction during the period of probation. If the workman had also completed probation period successfully, then, he was certainly entitled to be confirmed but unfortunately, the Industry had taken wrong stand saying that the respondent workman was employed as temporary workman. Once

it is held that the present workman was not temporarily employed but was appointed against a permanent vacancy on probation, then, he would be entitled to the benefits of confirmation, at least, from the date when others were confirmed or on completion of one year's service.

10. It has also come on the re cords that the workman's brother was holding the office of an office bearer and he had staged Dharna/Protest against the illegal activities of the management of the Industry. The fact is not disputed by the present petitioner but they had simply submitted that the action of the workman's brother had nothing to do with the action against the present workman. The Industrial Tribunal, after appreciating the evidence, has recorded a finding and correctly in the opinion of this Court that, the workman has suffered victimization

11. After going through all the findings and the material available on the records, I find no difficulty in holding that the Industrial Tribunal was absolutely justified in giving

status of the confirmed employee to the present workman and, also did not err in directing payment of difference of the wages. However, the Industrial Tribunal was unjustified in awarding 15% interest per annum less realizing that if the workman was not taken to be a probationer by the Industry, then, they had some reason in their favour in not extending the benefits. Learned counsel for the respondent, on being asked as to what should be the rate of interest, fairly submitted that interest may be reduced from 15% to 6% from the date of the confirmation till the date of award. On the merits, I do not find any reason to interfere, but however, would direct that interest would be payable at the rate of 6% per annum instead of 15% per annum. With the modification in the rate of interest, on the merits, I dismiss the petition. Rule is discharged accordingly. No costs.

[R.S. GARG, J.]

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